रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

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No. 25] NEW DELHI, SEPTEMBER 3— SEPTEMBER 9, 2017, SATURDAY/BHADRA 12—BHADRA 18, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 29 अगस्त, 2017

आ. अ. **54.**—लोक प्रतिनिधितव अधिनियम, 1951 (1951 का 43) की धारा 106(ख) के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी सं. 6/2014 में दिए गये उच्च न्यायालय, पटना के तारीख 8 अगस्त, 2017 के आदेश को प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/ES-1/EP/(6/2014)/BR-HP/2017]

आदेश से,

सुमित मुखर्जी, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 29th August, 2017

O.N. 54.—In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 8th August, 2017 of the High Court of Judicature at Patna in Election Petition No. 6 of 2014.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No. 6 of 2014

PRABHUNATH SINGH … Petitioner

Versus

Shri JANARDAN SINGH SIGRIWAL … Respondent

Appearance :

For the Petitioner : Mr. P.K. Verma, Sr. Advocate.
Mr. S.B.K. Manglam, Advocate.
Mr. Raghvendra Kumar, Advocate.
Mr. Suman Kumar Jha, Advocate.

For the Respondent : Mr. S.D. Sanjay, Sr. Advocate.
Mr. Sarvdeo Singh, Advocate.
Miss Parul Prasad, Advocate.

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

J U D G M E N T

Date: 08-08-2017

The petitioner Prabhunath Singh has filed this election petition under Section 80 and 80A of the Representation of People Act, 1951 (hereinafter referred to as "the R.P. Act") questioning the election of the returned candidate Sri Janardan Singh Sigriwal, the sole respondent from 19, Maharajganj Parliamentary Constituency for which the election was held on 07.05.2014 and the result was declared on 17.05.2014.

2. The petitioner prayed for declaration of election result of the sole respondent from 19, Maharajganj Parliamentary Constituency as void on the ground that the respondent is absconder in Bhagwan Bazar P.S. Case No.46 of 1986 corresponding to Tria No. 91 of 1992. It was incumbent for him to disclose the said case in the nomination paper but he deliberately and intentionally did not disclose the said information in the nomination paper filed before the Returning Officer. Therefore, the present case of the respondent is fully covered by the decision of the Supreme Court in the case of **Union of India vs. Association for Democratic Reforms, A.I.R. 2002 Supreme Court 2112** and also the decision of the Supreme Court in the case of **Kisan Shankar Kathore Vs. Arun Dattatraya Sawant & Ors, A.I.R. 2014 Supreme Court 2069**. Because of non- disclosure by the respondent this case will be covered within the ambit of definition of "corrupt practice" as mandated under Section 100 of the R.P. Act, as such the election result of the respondent is fit to be declared as void. Further the respondent did not carry out the requirement for valid nomination as per requirement of Section 33A of the R.P. Act. Therefore also the election result of the respondent be declared as null and void.

3. According to the petitioner's case as pleaded in the election petition, a notification for election was issued on 12.04.2014 made by the Ministry of Law and Justice which was notified in Bihar Gazette (Extraordinary) on 12.04.2014. The elections were held in different phases. The petitioner being candidate of Rastriya Janta Dal filed his nomination paper for 19, Maharajganj Parliamentary Constituency. The other candidates including the respondent also filed nomination paper and ultimately ten candidates contested the election from the said constituency.

4. The further case of the petitioner is that the respondent filed his nomination paper on 17.04.2014 which was accepted by the Returning Officer. The sole respondent had concealed the details of a criminal case which was pending against him on the date of filing of his nomination paper. In the said criminal case he was charge-sheeted and cognizance was taken and the trial had also commenced after framing charges against the respondent and during course of trial his bail bond had been cancelled due to his default in appearance. Warrant of Arrest was also issued against him by the Trial Court, District-Saran at Chapra. The respondent kept avoiding execution of warrant as well as arrest as such processes under Section 82 and 83 Cr.P.C. were issued and he was declared absconder. Therefore, the affidavit filed by the respondent along with his nomination paper in Form 26 does not disclose the said criminal case pending against him. Thus, he had deliberately concealed with a view to suppress the fact that a permanent warrant has been issued. According to the petitioner, on the basis of complaint case filed on 08.04.1986 being Complaint Case No.111 of 1986, Bhagwan Bazar P.S. Case No.46 of 1986 was registered

under Sections 147, 148, 448 and 380 IPC and charge-sheet was submitted against the accused persons including the respondent after investigation.

5. The further case of the petitioner is that when the respondent left pairvi, the Judicial Magistrate issued process by order dated 30.11.1989 but the respondent did not make any pairvi nor he was arrested. Therefore, ultimately the trial of the respondent was split up by order dated 01.09.1990 and permanent warrant was issued by order dated 15.12.1993 declaring the respondent as absconder and thereafter proceeded to decide the trial against the remaining accused persons. Therefore, because of non-disclosure, the election result of the respondent be declared void under section 100(1)(d)(iv) of the R.P. Act. The requirement of Section 33A of the R.P. Act has also not been complied with.

6. On being noticed, the respondent appeared and filed contesting written statement on 17.11.2014. The main defence of the sole respondent is that he was not aware about the pendency of Trial No.91 of 1992 arising out of Bhagwan Bazar P.S. Case No.46 of 1986 and because of non-disclosure of alleged criminal case it will never come under corrupt practice, therefore, the petitioner has misinterpreted the said term as explained in Section 123 of the R.P. Act and for non-disclosure of alleged criminal case a complaint case under Section 125A has already been filed by the petitioner.

7. The further case of the respondent is that since he had no knowledge about Bhagwan Bazar P.S. Case No.46 of 1986 on the date of filing the nomination paper, the respondent could not have disclosed the same in the nomination paper. Neither any notice nor any summon or warrant was served on the sole respondent as such the sole respondent was not aware about the pendency of the criminal case. Moreso the records were deposited in the record room. The petitioner has got criminal antecedent and has a historic background but the sole respondent is not facing any criminal case and in fact he contested the election of M.L.A. in 1995, 2000, 2005, 2010 and finally in 2014. He won all the elections right from 2000 and he was Minister in the State of Bihar also. Neither it can be said that the nomination paper of the respondent was improperly received nor it can be said that the petitioner violated the requirement of Section 33A of the R.P. Act nor this is a case under Section 100(1)(d)(iv) of the R.P. Act nor it can be said that in any way the respondent violated any provision of Constitution or the R.P. Act or rule made thereunder. On these grounds the respondent prayed for rejection of the election petition with heavy cost as this election petition has been filed due to jealousy with a view to gain cheap popularity and to cause irreparable loss and hamper the popular reputation of the respondent amongst the people.

8. On the basis of the aforesaid pleadings of the parties on 20.08.2015 the following issues were framed :

(i) Whether the election petition as framed and filed is maintainable in the eye of law?

(ii) Whether the election petition should be rejected for non-disclosure of material facts?

(iii) Whether the election petition is fit to be rejected for non-compliance of the provisions of section 83 of the R.P. Act?

(iv) Whether the nomination paper filed by the respondent-returned candidate from Maharajganj Parliamentary Constituency suffers from non- compliance of the Constitutional provisions and the orders passed by the Election Commission under Article 324 of the Constitution of India founded on the law declared by the Apex Court under Article 141 of the Constitution of India regarding non-disclosure, concealment and misinformation in the nomination paper regarding criminal antecedents?

(v) Whether the nomination paper of the respondent- returned candidate being in non-compliance of the provisions of the Act and the Rules/orders made thereunder his election is fit to be declared void within the meaning of Section 100(1)(d)(iv) of the R.P. Act?

(vi) Whether the affidavit filed by the sole respondent along with his nomination paper suffers from material defect because of non-disclosure, concealment and misinformation of his criminal antecedents in the affidavit in prescribed form including Form 26 along with his papers is substantial in nature and hence fit to be rejected which was improperly accepted within the meaning of section 100(1)(d)(i) of the R.P. Act?

(vii) Whether the respondent-returned candidate was an absconder in criminal cases and against him non-bailable warrant of arrest was pending at the time of election process and the date of filing of nomination paper till declaration of the result and hence, the election of the respondent-returned candidate is fit to be declared void?

(viii) Whether the result of the election is materially affected in view of the respondent himself being the returned candidate in the election in question?

(ix) Whether the election of the respondent-returned candidate is fit to be declared to be void?

(x) Whether the election petitioner is entitled for any relief or reliefs in the present case?

9. **Issue No. (i)** : So far this issue is concerned, this election petition is maintainable before the High Court under section 80 and 80A of the R.P. Act. No provision of any other law or the R.P. Act is shown by the respondent which provides that the election petition is not maintainable. Thus, it is held that this election petition is maintainable.

Issue No. (ii): So far this issue is concerned, from perusal of the election petition it appears that material facts have been disclosed by the petitioner, therefore, the election petition cannot be dismissed on this ground. Thus, Issue no.(ii) is answered in favour of the petitioner.

Issue Nos. (iii) to (x) : All these issues are interlinked, as such are decided together as the parties have adduced evidences relating to all these issues and all these issues center round the only question that for non-disclosure of criminal case being Bhagwan Bazar P.S. Case No.46 of 1986 whether the election result of the respondent be declared as void either under Section 100 (1)(d)(iv) or 100(1)(d)(i) of the R.P. Act and on the ground that non-compliance of constitutional provisions and the orders passed by Election Commission under Article 324 of the Constitution of India.

10. The learned Senior counsel, Mr. P.K. Verma appearing on behalf of the petitioner submitted that the present respondent was an accused in a criminal case being Bhagwan Bazar P.S. Case No.46 of 1986 which was registered on the basis of Complaint Case No.111 of 1986. The respondent appeared in the case and bail application was filed on his behalf by his advocate and the trial court granted bail to the respondent. After charge-sheet, cognizance was taken and thereafter also the respondent filed application and prayed for permission to remain on previous bail. The court below granted the prayer. Thereafter hazries were filed on behalf of the respondent by the counsel in the said case. Subsequently he left the pairvi in the case and, therefore, his bail bond was cancelled. In such circumstances, he intentionally and deliberately suppressed the pendency of the criminal case against him. Now, a false ground has been taken by the respondent that he had no knowledge at all. In fact except this defence the respondent has no other defence. The petitioner has produced the entire record of the criminal case which was called for by this Court to show that the respondent is an accused and he obtained bail and furnished bail bond.

11. The learned Senior Counsel, Mr. Verma further submitted that the F.I.R. of Bhagwan Bazar P.S. Case No.46 of 1986 has been marked as Ext.II/2 wherein the respondent has been shown as an accused. The copy of charge-sheet has been marked as Ext.II/3. The trial court took cognizance of the offence on 06.10.1986 and this order sheet has been marked as Ext.II/4 which clearly shows that against this respondent cognizance was taken. The order dated 15.04.1986 has been marked as Ext.II/5 which shows that the respondent was granted bail by the court below. Further the bail petition filed by the respondent has been marked as Ext.II/6(b) and on this bail application the advocate of the respondent Yogendra Narayan Singh had signed and this signature of advocate has been marked as Ext.II/6(c). According to learned Senior Counsel, after obtaining bail the respondent furnished bail bond which has been marked as Ext.II/6(a) and the advocate who identified the L.T.I. of the respondent has been marked as Ext.II/6(d). All these documentary evidences clearly prove the fact that the respondent had the knowledge of pendency of Bhagwan Bazar P.S. Case No.46 of 1986. According to the learned Senior Counsel, since the petitioner is challenging the election of the respondent, the burden is on the petitioner to prove the fact that the respondent is an accused in the criminal case about which he had the knowledge and on the basis of these documentary evidences the petitioner has been able to discharge the burden. In such circumstances, mere denial of knowledge by the respondent will not suffice.

12. The learned Senior Counsel further submitted that the complaint case was filed with regard to a room wherein the respondent was carrying on his works of political party on rent. The kirayanama was executed on 29.03.1986 (Ext.II/7) whereon the concerned persons Ravindra Singh and the respondent have signed and their signatures have been marked as Ext.II/7(a) and Ext.II/7(b) respectively and this complaint case giving rise to Bhagwan Bazar P.S. Case No.46 of 1986 was filed because of dispute relating to claim of title with respect to the said tenanted premises on 2nd April, 1986. In such circumstances, it cannot be said that the respondent had no knowledge about the complaint case because just 2-3 days after execution of kirayanama the complaint case was filed.

13. The learned Senior Counsel further submitted that over and above the documentary evidences the petitioner has also examined himself as P.W.7 and two important witnesses, who are P.W.5 and P.W.6. P.W.5 is an advocate who has identified the L.T.I. of respondent on the bail bond and P.W.6, Ravindra Singh who is co- accused in the said criminal case along with respondent. He has clearly stated that the building which was tenanted was claimed by him, therefore, he along with his brother and the respondent and another co-accused Prem Chandra Prasad were made accused. This dispute related to the ownership of the building and he got the kirayanama executed as landlord. According to the learned Senior Counsel, this witness has fully supported the case that the respondent was accused and had obtained bail and furnished bail bond. Subsequently the respondent left pairvi and bail bonds were cancelled. Thereafter warrants were issued. According to the learned Senior Counsel, Trial Register has been produced which has also been marked as exhibit which shows that permanent warrant was issued and the record of the aforesaid case relating to the respondent was split up and was deposited in the Record Room. The trial of rest accused was conducted after splitting up the record. In such view of the matter the petitioner

has been able to prove about the knowledge of the respondent regarding the criminal case beyond all reasonable doubts.

14. The learned Senior Counsel further submitted that the respondent has not only disclosed this criminal case in nomination paper but has also not disclosed the properties which are in the name of his wife, therefore also the election of the respondent is liable to be declared as void. According to the learned Senior Counsel, to prove this fact that there are many other properties in the name of wife of the respondent which are not disclosed in nomination paper, the registered sale deeds were produced by the petitioner, which have been marked as Ext.III/1, Ext.III/2 and Ext.III/3.

15. The learned Senior Counsel relying on the decision of **Krishnamoorthy Vs. Sivakumar, (2015) 3 Supreme Court Cases 467** submitted that non-disclosure of the offences in entirety and in full details, would amount to the corrupt practice of undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under section 100(1)(b) of the R.P. Act once such non-disclosure is established. According to the learned Senior Counsel, the Hon'ble Supreme Court in various other decisions such as **A.I.R. 2014 Supreme Court 344 (Resurgence India Vs. Election Commission of India & Anr.), A.I.R. 2002 Supreme Court 2112 (Union of India Vs. Association for Democratic Reforms) and A.I.R. 2014 Supreme Court 2069 (Kisan Shankar Kathore Vs. Arun Dattatraya Sawant & Ors.), 2017 (1) P.L.J.R. 50 (SC) (Sri Mairembam Prithviraj @ Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh)** has held that non-disclosure as required under Section 33A of the R.P. Act will amount to improper acceptance of nomination paper covered under Section 100(1)(d)(i) of the R.P. Act.

16. The learned Senior Counsel, Mr. Verma submitted that the voters of the constituency have right to know the criminal antecedent, assets and liabilities of the candidate who offers himself or is nominated to represent them. This right flows from Article 19 (1)(a) of the Constitution of India and thus non-disclosure of pending cases, assets or liabilities would amount to violation of said fundamental right of the voters as has been held by the Supreme court in the case of **Union of India vs. Association for Democratic Reforms (supra)**. Therefore, the nomination paper itself was improperly accepted by the Returning Officer, as such the election of the respondent is also liable to be declared as void as provided under Section 100(1)(d)(i) and (iv) of the R.P. Act. According to the learned Senior Counsel, because in the present case the improper reception of nomination paper of the respondent itself is the ground, the petitioner is not required to further prove that because of improper reception the election result was affected. Once it is held that because of non- disclosure of the criminal case and the assets, the nomination paper was not in conformity with the provision of Section 33A of the R.P. Act as such his nomination paper is liable to be rejected which automatically means that the election result is affected. On these grounds the learned Senior Counsel submitted that the election petition be allowed and the election result of the returned candidate, the respondent be declared as void.

17. On the other hand, the learned Senior Counsel, Mr. S.D. Sanjay appearing on behalf of the sole respondent submitted that there is no proof of the fact that the respondent Janardan Singh Sigriwal ever appeared in the aforesaid Bhagwan Bazar P.S. Case No.46 of 1986. The respondent neither appeared in the said case nor he ever filed any bail application nor he furnished bail bond prior to taking cognizance and after taking cognizance also he never appeared and filed a bail application seeking permission to remain on previous bail. The respondent never filed any hazri in the case nor he ever engaged any advocate on his behalf nor there is signature of the respondent on any paper in record of the aforesaid criminal case. There are many discrepancies in the name of the accused. Somewhere it is written as Janardan Singh, somewhere it is written as Janardan Srivastava, somewhere it is written as Janardan Sikariwal. In the bail order also Janardan Singh was granted bail. Much has been argued on behalf of the petitioner that it is not the case of the respondent that there was other accused named as Janardan Singh or Janardan Srivastava but when the respondent specifically stated that he has no knowledge about this case, the burden is on the petitioner to prove that in fact this respondent had the knowledge of the said case and in fact he ever appeared and filed vakalatnama or bail application or hazri etc. but the petitioner has tried to establish the fact that the respondent was an accused. When there is discrepancy in the order sheet, in the bail bond and in the bail application and also in some of the hazries, can it be presumed that this respondent had appeared in the case. According to the learned Senior Counsel since the petitioner is alleging that intentionally and deliberately the respondent did not disclose the criminal case in nomination paper, the petitioner is required to prove the knowledge of the respondent beyond all reasonable doubts because it will be a corrupt practice according to the decision of the Supreme Court and it will have serious consequences. In such circumstances, a fact which is required to be proved beyond all reasonable doubts cannot be presumed on the basis of preponderances of probabilities.

18. The learned Senior Counsel, Mr. S.D. Sanjay further submitted that the petitioner is required to prove that any vakalatnama is executed by the respondent in favour of any advocate but there is no such vakalatnama on record. The petitioner is required to prove that the respondent appeared and filed bail application but there is no such evidence that in fact on the particular date he surrendered before the court below. No doubt, in the order sheet it is mentioned but there is no hazri or the fact that the respondent was physically present before the court. Ravindra Singh (P.W.6) has stated that all pairvies were done by him in the case and in fact the hazries were also filed by him. It is the practice that whenever hazri is filed in a criminal case, the signature of accused is

obtained on hazri but in the present case hazries are filed by Ravindra Singh and/advocate clerk writing the names of the accused without obtaining the signature or L.T.I. of the accused persons. Therefore, on the basis of these type of false hazries or unauthorized representation application filed by any person or advocate under section 317 Cr.P.C, the court cannot presume the fact that this respondent had appeared in the case and instructed the particular advocate or advocate clerk to appear on his behalf and moreover there is absolutely no evidence on record to show that this respondent ever executed any vakalatnama in favour of any advocate and gave any instruction to him. The evidence of P.W.5 cannot be relied upon. He has stated in the cross-examination that Yogendra Narayan Singh had filed the bail application on behalf of the respondent and this P.W.5 was working with him. This respondent had executed a vakalatnama which was accepted by this witness and Yogendra Narayan Singh but Yogendra Narayan Singh has been examined on behalf of the respondent as R.W.2, who has stated that the bail petition was prepared and presented to him by Ravindra Singh who was also an accused and he was knowing him from before who is a litigant. At that time Ravindra Singh was a law student and he used to defend his case on his own. He clearly stated that when he argued the bail application no accused was present before him and after bail the other works such as bail bonds etc. were filed by Ravindra Singh. He has also stated that Arun Kumar Verma (P.W.5) was never his junior nor he worked as junior in any case with him. In such circumstances, the evidence of either P.W.5 or P.W.6 cannot be relied upon.

19. The learned Senior Counsel further submitted that prior to 2002 it was not required that the criminal antecedents were to be disclosed in the nomination paper. It is after the decision of the Supreme Court in the case of **Union of India Vs. Association for Democratic Reforms (Supra)** it was incumbent on the part of the candidate to disclose the criminal antecedent and other matters detailed in Section 33A of the R.P. Act which was inserted by way of amendment in the year 2002. The present respondent contested two times Assembly Election in the year 2005 and also in the year 2010 but during this period the details of this criminal case were not disclosed because the respondent had no knowledge. The respondent had disclosed four criminal cases in his nomination paper filed in this election of 2015. If he had got knowledge about the present criminal case, there is no reason as to why he would have concealed the criminal case. According to the learned Senior Counsel, the main accused Ravindra Singh compromised the case with the complainant and in fact he was acquitted. Had the respondent got knowledge about the case, he would have also appeared and got the case disposed of because it was petty matter according to the case made in the complaint exhibited in this case. There is no reason as to why he will allow this cancer to spoil his political life because the respondent is fighting the election and winning the same.

20. So far issuance of warrant against the respondent and issuance of process under Sections 82 and 83 Cr.P.C. and issuance of permanent warrant are concerned, those were never affected on the respondent. The court might have ordered or issued the warrant but when those things were never executed, how the knowledge of the respondent can be inferred. The records were deposited in the year 1993 which would be evident from the Trial Register (Ext.II/8). Therefore, since 1993 the aforesaid criminal case admittedly was not posted for any future date nor it was shown in the diary of the court or cause list of the court. Therefore, how the respondent will come to know that there is any case pending for trial. How he will presume about the pendency of this case in the year 2014 i.e. after more than 20 years of the deposit of record? From the exhibit produced by the petitioner, it appears that so-called bail bond was cancelled in 1989 and since thereafter i.e. more than 28 years have passed, there is nothing on record to show that any information was given to respondent, summons were served on respondent, warrant was affected or properties were attached. The court wrote letter to the S.P. but it was also not executed. In such circumstances, how the knowledge of the respondent shall be presumed by the court of law. In fact after deposit of the record in the year 1993 the case was shown as disposed of case by the court because that case was not running for trial, as such also legally it cannot be said that the criminal case was pending for trial.

21. So far non-disclosure of assets of the wife is concerned, the learned Senior Counsel, Mr. S.D. Sanjay submitted that there is no pleading to this effect nor there is any issue framed, therefore, this question which is being raised at the time of trial is a surprise to the respondent. Had there been any pleading, the respondent would have got opportunity to meet the same. Moreover, this ground i.e. non-disclosure of asset in the name of his wife could not have been added even by way of amendment as it will be time barred and moreover in election matter Order 6 Rule 17 C.P.C. will not apply. Therefore, any evidence produced by the petitioner regarding this point about non-disclosure of asset is concerned, the evidences are liable to be just ignored. The learned Senior Counsel relying on the decision of Supreme Court, **(2012) 3 Supreme Court Cases 236 (Markio Tado Vs. Takam Sorang)** submitted that material facts must be precisely pleaded in the petition and if no such material fact is pleaded, no evidence can be allowed to be adduced on a plea which is not raised in the pleading. The prayer for declaration of election result of the respondent as void is based on only plea i.e. non-disclosure of criminal case. This non-disclosure is entirely different than the non-disclosure of asset, therefore, it cannot be said that petitioner had pleaded precisely about the non-disclosure and this non-disclosure will include every other non-disclosure i.e. other than the criminal case.

22. The learned Senior Counsel further submitted that the ground i.e. non-disclosure of a criminal case is not a ground for rejection of nomination paper. The R.P. Act does not provide that if there is no mention of criminal case, the nomination paper is to be rejected.

23. It is by reason of the decision of the Supreme Court Section 33A of the R.P. Act was inserted by way of amendment in the year 2002 and since then the candidates are required to disclose about the fact mentioned in Section 33A of the R.P. Act. Then also it is not a ground for rejection of the nomination paper. In such circumstances, the decisions (relied upon by the petitioner) of the Supreme Court which were rendered in the facts and circumstances of that particular case, cannot be made applicable to the present case and the election result of the respondent will be declared void because it will have serious consequences. The petitioner is admittedly sentenced to life imprisonment and is lying in jail custody, as such, he will not lose anything but if the election result of the respondent is declared void, then the reputation, name and position of the respondent will be lost that too for this petty matter, specially when the respondent has got no knowledge about the same and he has disclosed the cases which were pending for trial against him. Therefore also, it is substantial compliance of the requirement of law. On these grounds, the learned Senior Counsel submitted that the election petition be dismissed with cost.

24. Now let us consider the arguments of the learned counsels for the parties one after the other on the basis of evidences and the decisions.

25. The petitioner's simple pleading is that a criminal case being Bhagwan Bazar P.S. Case No.46 of 1986 wherein the respondent is accused against whom charge-sheet has been submitted has not been disclosed in the nomination paper. The record of criminal case i.e. Bhagwan Bazar P.S. Case No.46 of 1986 was called for from the court concerned. It is admitted fact that in the nomination paper the respondent had not disclosed this criminal case. From perusal of the nomination paper (Ext.I/3), it appears that the respondent has disclosed four criminal cases numbered as 1086 of 2014, 3845 of 2014, 749 of 2014, 1159 of 2014 and has also disclosed the date of cognizance and under which section the cognizance has been taken. The F.I.R. of Bhagwan Bazar P.S. Case No.46 of 1986 has been marked as Ext.II/2. At serial no.8 the name of the respondent is there. It may be mentioned here that this Bhagwan Bazar P.S. Case No.46 of 1986 arises out of Complaint Case No.111 of 1986. The petitioner-respondent got bail order dated 15.04.1986 marked as Ext.II/5. From perusal of this order sheet, it appears that it is mentioned in the order sheet that accused Jagdish Prasad, Prem Chand and Janardan Singh surrendered and a bail application was moved by Yogendra Narayan Singh, who has been examined as R.W.2.

26. So far these two exhibits are concerned, no doubt in the F.I.R. the name of the respondent is there but in the bail order Janardan Singh is mentioned. It is not the case of the petitioner that the alias name of Janardan Singh Sigriwal is Janardan Singh or that the respondent is also known as Janardan Singh. R.W.2, Yogendra Narayan Singh is an advocate practicing at Civil Court, Chapra since 1970. In his examination-in-chief at paragraph 3, he has stated that the bail application was not drafted by him and in fact it was prepared and presented to him by one Ravindra Singh, who was co-accused. At that time he was a law student and he used to defend his case himself. No accused was present before this witness when bail petition was argued by him. No doubt he admitted that in the bail application he has signed. This witness has also stated that the advocate Arun Kumar Verma never worked with him nor he was ever junior to him. Examining the record, this witness has further stated that the hazri at page 69 of the original record has been filed on behalf of five accused but it is not signed by any advocate.

27. I perused the hazri. It appears that there is no signature of even any of the accused. Therefore, hazries are being filed by either advocate clerk or somebody else by writing the names of the accused persons. It may be mentioned here that whenever hazri is filed which is the normal practice in the lower court, accused always signed the hazri and it is identified by the advocate. This means that the accused is physically present before the court. If accused is not present on any date, application under Section 317 (1) Cr.P.C. is filed by the advocate. There is no provision in the Cr.P.C. that if accused is not present then also hazri will be filed giving the names of the accused.

28. P.W.5 is advocate Arun Kumar Verma. He also claimed that he is practicing advocate at Civil Court, Chapra. He claimed that he was an advocate for the respondent Janardan Singh Sigriwal in a criminal case. In his cross-examination, he has stated that vakalatnama was given by the respondent and he and Yogendra Narayan Singh (R.W.2) had accepted the vakalatnama. He also stated that bail application was filed by Yogendra Narayan Singh and this witness was working as junior to Sri Yogendra Narayan Singh. This statement of this witness has been contradicted by R.W.2, Yogendra Narayan Singh. Admittedly no vakalatnama executed by Janardan Singh Sigriwal is on record. It is also admitted fact that there is no chit of paper either hazri or anything on the record of Bhagwan Bazar P.S. Case No.46 of 1986 showing either signature of the respondent or writing of the respondent.

29. The bail bond said to have been furnished on behalf of the respondent has been marked as Ext.II/6(a). In this bail bond L.T.I. is there and the name of respondent is mentioned. The L.T.I. is attested by P.W.5. The respondent clearly denied to have furnished any bail bond. It may be mentioned here that the petitioner never got the L.T.I. compared by an expert with the admitted L.T.I. of the respondent. The evidence of P.W.5, Arun Kumar Verma is there, who said that he has identified. Except this evidence that Janardan Singh was present before the advocate, P.W.5 by furnishing bail bond and it is L.T.I. of respondent, there is no other material available on record. On the contrary, R.W. 2 said that after bail whatever other formalities required to be done were done by co-accused Ravindra Singh (P.W.6). The bail bond furnished is dated 15.04.1986. The advocate is deposing before the court in the year 2017 i.e. after more than 30 years but he is saying that respondent was present before him and

he identified the accused. From perusal of the bail order, no doubt it is mentioned that the accused persons including Janardan Singh surrendered and filed bail application but in the order sheet nowhere it is mentioned that the accused persons were physically present in the court. As stated above, if Janardan Singh Sigriwal surrendered and the bail application was filed by Janardan Singh Sigriwal, how in the order sheet Janardan Singh is mentioned and the bail bond is also furnished mentioning the name as Janardan Singh. The other fact is one of the bailors Sri Krishna Singh has been examined on behalf of the respondent as R.W.3, who has clearly denied and said that the signature and thumb impression are not his signature and thumb impression. He has also stated that he never stood as a bailor for Janardan Singh Sigriwal and there is no case number on the bail bond.

30. The learned Senior Counsel, Mr. Verma gave much emphasis that subsequently also the respondent filed application and prayed for allowing him to remain on previous bail and thereafter on his behalf hazries were filed and also application under Section 317(1) Cr.P.C. was filed. So far this submission is concerned, it appears that on 06.11.1986 the record of the above criminal case was received in the court concerned and the record was in torn condition and it is mentioned in the order sheet that the Presiding Officer had been transferred but subsequently on the same day it is written in the order sheet that hazries have been filed by five accused persons and application was filed praying for allowing them to remain on previous bail. The so-called hazri dated 06.11.1986 is available on record. From perusal of this hazri which is at page 45 of the record of criminal case, it is clear that names of five accused persons are written only by somebody else and it is signed by advocate. There is no signature of any of the accused. Now, therefore, there is no hazri of the respondent and from the order sheet dated 06.11.1986 also it does not appear that any of the accused was physically present or that this respondent herein was physically present before the court. According to the evidence of R.W.2, the co-accused Ravindra Singh was defending cases by himself. From perusal of this hazri dated 06.11.1986, it is clear that one person has written the name of other accused persons including the respondent. From perusal of the entire record of the criminal case, there is no other paper which indicates either signature or physical presence of the respondent before the court.

31. R.W.1 is Kundan Kumar, who was the Returning Officer of 19, Maharajganj Parliamentary Constituency at the time of election. In his cross-examination, he has clearly stated that at the time of filing nomination paper a list of absconder is before the Returning Officer and a police officer also sits outside the office of the Returning Officer and if the list contains the name of any such candidate against whom there was a non-bailable warrant issued, then it is the duty of the police officer to take appropriate step and arrest him. In the present case, therefore, on the date of election the non- bailable warrant of arrest was not there with the Returning Officer nor the name of respondent was there in the list.

32. From perusal of the entire record, it appears that after charge-sheet no notice/summon was ever sent to the respondent as provided under Section 204 of the Cr.P.C. It is argued on behalf of the petitioner that because the accused were present, no summon was issued. As stated above, there is nothing on record that after taking cognizance on any particular date the respondent physically appeared and filed hazri or that he filed bail application or that when the bail application was moved, he was physically present before the court. As I have discussed above, name of the respondent was written by somebody else. Subsequently applications were filed under Section 317 Cr.P.C. without there being any authority given by the respondent. P.W.5 although claimed that he had accepted vakalanama of the respondent but categorically an unambiguous in the last line of his examination-in-chief has stated that he had no instruction from Mr. Janardan Singh Sigriwal to file appearance. Now it is clear that after taking cognizance this respondent was never present physically before the court nor he appeared and signed any document or paper nor he engaged any advocate nor he instructed anybody to file appearance on his behalf or to file hazri on his behalf,. Then the question is who was filing hazries, who was obtaining the order from the court and who was impersonating the respondent, there is no clear answer nor it is explained.

33. It appears that after cognizance, routine orders were passed by the Presiding Officer adjourning the case from one date to other for police paper for one year or more but then ultimately bail bonds were cancelled and warrants were issued. There is no report that the warrant was ever affected. Without there being any report order was passed and processes were issued under Sections 82 and 83 Cr.P.C. but it was also not affected on the respondent and ultimately permanent warrant was issued and the record was deposited in the record room which is evident from the Trial Register (Ext.II/8). The bail bonds were cancelled in the year 1989 and warrants were issued, processes were issued, permanent warrant was issued but it shows only in the order sheet that they were mentioned and in the margin of the order sheet it is mentioned as complied with. Except this mentioning of complied with or warrant issued or process issued, there is no chit of paper showing that in fact the order of the court was ever complied with. No carbon copy is available or exhibited on behalf of the petitioner. Therefore, now it becomes admitted fact that nothing was affected on the respondent.

34. The respondent has been examined as R.W.4, who has denied all the allegations made by the petitioner about the knowledge of the criminal case. Therefore, the burden is on the petitioner to prove that the respondent had the knowledge about the criminal case and knowingly he did not disclose in the nomination paper. The learned Senior Counsel relying on the provision as contained in Section 114 of the Evidence Act submitted that the

court may presume that judicial and official acts have been regularly performed. According to the learned Senior Counsel, Mr. Verma, F.I.R. shows that the respondent is accused and charge-sheet has been submitted. In such circumstances, it will be presumed that this respondent appeared and obtained bail order and, therefore, he had got knowledge. It will be presumed that bail bond was furnished by him, therefore, he had the knowledge. If he did not appear then it is for him to say that in his place who appeared in the court in view of Section 106 of the Evidence Act.

35. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

36. Therefore, in view of the provision the court is not bound to presume existence of a fact in all cases and the presumption available in this provision is rebutable. The illustration of Section 114 (e) provides that the judicial and official acts have been regularly performed may be presumed by the court. This impliedly means that the acts have been regularly performed. Once it is denied by the respondent in the present case that he ever appeared or prayed for bail or obtained bail order or executed vakalatnama, the presumption available stands rebutted.

37. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the present case, when the respondent is denying his knowledge, there is no question of his special knowledge arises. It is for the petitioner to prove his case pleaded in the election petition and in the election petition the allegation is that there is a criminal case against the respondent wherein cognizance has been taken and the respondent has been declared absconder but he did not disclose in the nomination paper. The petitioner had proved the facts but then from perusal of the record it appears that in the bail order one Janardan Singh was granted bail whereas the respondent is Janardan Singh Sigriwal, in hazri filed on behalf of accused it is mentioned as Janardan Singh Srivastava, no vakalatnama is available and one advocate, P.W.5 said that he had no instruction on behalf of respondent and the other advocate R.W.2 said that the respondent never appeared before him and whatever has been done is done by P.W.6, co-accused Ravindra Singh. In view of the above fact now the question will be whether this Court will presume a fact that this respondent was ever physically present before the Court or that he engaged any advocate either P.W.5 or R.W.2. Whether this Court will presume that the respondent had the knowledge about the case?

38. As discussed above, after filing charge-sheet there is nothing on record that this respondent ever appeared or filed bail application before the Court or he filed any hazri or he executed any vakalatnama in favour of any advocate. In fact no vakalatnama executed by him is on record. The normal conduct of an accused is first to appoint his advocate and then apply for certified copy of the charge-sheet or the complaint. In the present case, there is nothing to show that the respondent ever executed vakalatnama appointing any advocate or he applied for certified copy. The bail bond has been cancelled in the year 1989. It may be mentioned here that this bail bond is of April, 1986 which is prior to filing of charge-sheet. Therefore, after taking cognizance if the accused was not present, summons are required to be issued under Section 204 Cr.P.C. In the present case, no summon was issued and nothing is there on record that this respondent appeared and application for previous bail was filed by him. The record shows that somebody had written his name on so-called hazri and application was moved for previous bail which was signed by the In-Charge Court. Whether in this fact the Court will presume that this respondent had appeared physically and had filed application for previous bail without there being any evidence only on the basis of the provision as contained in illustration (e) of Section 114 of the Evidence Act. In my opinion, when the respondent categorically denied this fact, only on the basis of presumption no categorical finding cannot be recorded.

39. So far knowledge is concerned, even if it is held that prior to taking cognizance the respondent had appeared and bail application was filed by him but when no notice was issued to him after taking cognizance, how the accused will presume that cognizance has been taken and he will appear for trial.

40. Now let us leave all these facts. All these facts happened in the year 1986-1989 and thereafter the record was deposited in Record Room in the year 1993. Thereafter the case died its legal death. It will revive only after arrest of the respondent. It impliedly means that when the criminal case died legally in the year 1993, the case was not pending for trial. Once the record is deposited in the Record Room then it is shown as disposed of case and never shown as pending for trial. The case is never shown in the cause list of the Court nor any future date is fixed. Now since 1993 nothing happened in the case. How the respondent will know that the case is pending against him after 20 years because the nomination paper is filed in the year 2014? Whether this Court will presume this fact? It is very easy to say that Court can presume but in the present case the circumstances discussed above have to be considered.

41. The petitioner has been examined as P.W. 7. He has stated that he was knowing about this criminal case prior to filing the nomination paper. Why he did not complain before the Returning Officer prior to acceptance of nomination paper of the respondent? There is no answerer to this fact. The petitioner has got no relation with the respondent and both are of different political party. The case is of the year 1986. How the petitioner was knowing this case? It is not clear. He never accompanied the respondent in the case in the Court nor he is an

accused in the case nor he was pairvikar of the respondent nor he acted ever in any capacity on behalf of the respondent then all of a sudden how he came to know that in a case warrant has been issued against the respondent. It is also not clear. It appears that in this matter the main role is played by the co-accused of the criminal case i.e. Ravindra Singh, P.W.6.

42. Now in view of my above discussion, the following facts emerge :

(a)	The respondent never executed any vakalatnama nor he instructed any advocate for moving bail application.
(b)	The respondent never appeared physically before the Court or surrendered on any date or he personally furnished the bail bond.
(c)	Except the statement of P.W.5 that the L.T.I. on bail bond is of respondent, there is nothing on record in support of the fact.
(d)	No bailor has been examined by the petitioner in support of the fact tha respondent furnished bail bond. On the contrary the respondent has examined one of the bailors.
(e)	The bailor never filed any affidavit in support of the bail bond as from the record of criminal case it appears that in respect of bail bonds of other co-accused, affidavits have been sworn by the bailor.
(f)	The respondent never authorized anyone to file hazri or do pairvi in the criminal case or to file application under Section 317 Cr.P.C.
(g)	In the bail order Janardan Singh is mentioned whereas in charge-sheet Janardan Singh Sigriwal is there. In hazri filed, it is mentioned as Janardan Singh.
(h)	After taking cognizance no summon was issued in the name of the respondent.
(i)	No police paper ever handed over to the respondent.
(j)	There is no compliance report of warrant of arrest.
(k)	There is no compliance report of process under Section 82 and 83 Cr.P.C.
(l)	The name of the respondent does not find place in the list of persons against whom warrant was issued as said by P.W.1.
(m)	At page 85 in the affidavit which is on record of a criminal case the father's name of Ravindra Singh, co-accused has been mentioned as Janardan Singh.
(n)	The village of respondent is Noor Nagar whereas in the complaint it is mentioned as Sakin Nagar.
(o)	The name of accused mentioned in bail bond is Janardan Singh.
(p)	There is no service report of notice.
(q)	No steps were taken against the bailors.

43. In view of the above facts, it appears that there are many discrepancies and, therefore, in my opinion, the presumption according to illustration (e) of Section 114 of the Evidence Act cannot be applied in the present case.

44. The Hon'ble Supreme Court in the case of Union of **India Vs. Association for Democratic Reforms, A.I.R. 2002 Supreme Court 2112 has held that in a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. He has choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in criminal case, for maintaining purity of elections and healthy democracy, voters are required to be educated and well informed about the contesting candidate. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if**

the case is decided its result, if pending - whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters. In this very decision, the Supreme Court directed the Election Commission to call for information on affidavit by issuing necessary order in exercise of its power under Article 324. Pursuant to this decision Sections 33A and 33B of the R.P. Act were inserted by way of amendment. However, Section 33B has been declared ultra vires. Section 33A(1)(i) provides that candidate shall also furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction.

45. In the present case, at our hand, admittedly no charge has been framed against this respondent.

46. The Hon'ble Supreme Court in the case of **Kisan Shankar Kathore Vs. Arun Dattatraya & Ors., A.I.R. 2014 Supreme Court 2069** at paragraph **38** has held as follows:

> **"**When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non- disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned senior counsel appearing for the Election Commission, right argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.**"**

47. In view of the aforesaid decision, the present election petition has been filed by the petitioner and it is submitted that since there is suppression of material information, it will be a case of improper acceptance of nomination paper and therefore, the election result can be declared as void. So far factual aspect is concerned, it appears that in the said case before the Supreme Court the returned candidate did not disclose about dues in respect of electricity meters standing in his name. He did not disclose municipal dues in respect of bunglow standing in the name of his wife. The affidavit was also silent about bunglow and vehicle standing in the name of his wife and about his share in partnership firm. Therefore, it appears that in that case the returned candidate was knowing the facts but then he suppressed many facts. Therefore, the Supreme Court found that the information contained in the affidavit cannot be treated as sufficient/substantial compliance. It appears that there was total suppression of material information about the assets. In the present case, at our hand, the respondent had disclosed four criminal cases which are of recent years. This criminal case which is not mentioned is of the year 1986 i.e. prior to 30 years of the election and according to the respondent he had no knowledge. I have seen above the record of the criminal case, how badly it was maintained and the case was conducted by the Court. When the respondent had disclosed four criminal cases what prevented him from mentioning the fifth one. Because it is not the law that had the fifth one been mentioned, the nomination paper would have been rejected. Therefore, there is no reason as to why the respondent will suppress the criminal case. As stated above, the law requires i.e. Section 33A (1)(i) that the candidate is required to mention pending criminal case wherein charge has been framed. Admitted position is that no charge has been framed against the respondent. Section 33A(1)(ii) is about the criminal antecedent of the respondent. It is not the case of the petitioner that respondent has already been convicted.

48. The petitioner relied upon the decision of the Supreme Court **(2015) 3 Supreme Court Cases 467 (Krishnamoorthy Vs. Sivakumar)** wherein also for non-disclosure, the election of returned candidate was declared void. From perusal of this decision, the Hon'ble Supreme Court has held that **non- disclosure of criminal antecedent of candidate in entirety and in full detail amounts to corrupt practice of undue influence and election of candidate must be set aside on such grounds.** It appears that in that case the candidate had not disclosed the details of eight criminal cases pending against him and had disclosed only one. The Supreme Court held that **as the candidate has the special knowledge of pending cases where charges have been framed and there is non-disclosure of his part of the offences in entirety and in full detail, it would amount to**

corrupt practice of undue influence covered under section 100(1)(b) of the R.P. Act. It appears that in that case it is not the defence of the candidate that he has no knowledge about the cases but this fact was rather not disputed by the returned candidate. Therefore, knowingly the returned candidate did not disclose the details but in the present case the fact is otherwise. In the present case, the details of four cases have been mentioned and according to the respondent because he had no knowledge about 30 years old case, he has not mentioned. Admittedly after insertion of Section 33A in the year 2002 also the respondent had contested many elections and he won and in all those elections he did not mention about this criminal case. Prior to that also he had contested the election but nowhere he disclosed about this criminal case. It is not disputed by the parties that if criminal case is pending which is disclosed in the nomination paper then it will not be a ground for rejection of the nomination paper then why one will not disclose as it is the requirement after insertion of Section 33A of the R.P. Act.

49. Now let us consider in other way. If the respondent had also disclosed this criminal case then also his nomination paper would not have been rejected. Then why he did not disclose only to give a chance to the petitioner to get the election result of the respondent declared as void. There is no clear answer to this fact.

50. The learned Senior Counsel for the petitioner also relied upon the decision of Supreme Court in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh, 2017 (1) P.L.J.R. 50 (SC)** and submitted that in that case also a false declaration relating to educational qualification was made by the appellant and the election result was declared void. According to the learned Senior Counsel, if the nomination paper of the returned candidate is improperly accepted then in such cases the petitioner is not required to prove that the election result has been materially affected. In the present case, since the nomination paper of the respondent is properly accepted, therefore, the petitioner is not required further to prove that it materially affected the result of the election.

51. From perusal of this decision, it appears that in the case before the Supreme Court the nomination of the candidate was objected at the time of scrutiny and the Returning Officer directed to submit documents in proof of his educational qualification as declared in the affidavit and the candidate failed to produce any document in spite of such direction but Returning Officer accepted the nomination. In the present case, this is not the fact. Although the petitioner, who has been examined as PW.7, claimed that he knew the pendency of criminal case pending against respondent prior to filing nomination but then he never objected to the nomination of the respondent. Moreover, in the case before the Supreme Court in spite of direction of the Returning Officer, the candidate did not submit the document in support of his declaration. In spite of the said fact his nomination paper was accepted. In the present case, directly election petition has been filed after declaration of the result.

52. From perusal of various decisions referred to above and the decisions referred to in these decisions, it is clear that the intention of the legislature as well as the intention of the Supreme Court for complying the provisions of the R.P. Act strictly is mainly based on the idea to eradication of criminalisation of politics and corruption in public life. When the criminality enters into the grass- root level as well as at the higher levels, there is feeling that "monstrosity" is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In constitutional democracy, criminalization of politics is absolutely unacceptable. The criminalisation creates a concavity in the heart of democracy and has the potentiality to paralyze, comatose and strangulate purity of the system. Therefore, in view of the settled principle only to check the criminalisation of politics the Hon'ble Supreme Court had directed the Election Commission to issue directions requiring furnishing of the details and accordingly, section 33A was added and the informations are supplied by the candidates. That does not mean that if information about one case is not given because of want of knowledge, the election will be declared as void. There cannot be any straightjacket formula. The intention of the candidate has to be considered i.e. whether he intentionally and knowingly made the concealment or suppressed the fact and thereby deprived the voters in their free exercise of electoral right. In my opinion, by no stretch of imagination it can be said here that because of non-disclosure of this criminal case the voters did not exercise freely the right of voting. In other words, it cannot be said that only if the respondent had disclosed this criminal case, the voters would have freely exercised the voting right.

53. The further fact in the present case is that the co- accused P.W.6, Ravindra Singh with whom there was property dispute by the complainant compromised and the case of the co- accused Ravindra Singh was disposed of wherein the co-accused was acquitted. At the time of deposit of record under Section 299 Cr.P.C. the Magistrate could have recorded the evidence but it was not done. Further in the case of **Krishnamoorthy (supra)** the case was of embezzlement which were within the knowledge of the candidate. In the present case, the case is petty matter and the main dispute was between Ravindra Singh and the complainant, which was compromised.

54. The learned Senior Counsel for the petitioner submitted that according to the provision as contained in Section 33A of the R.P. Act, knowledge or no knowledge of the criminal case is required to be mentioned. So far this submission is concerned, I may say that if one has no knowledge about his criminal case, how can he disclose about the criminal case.

55. Since the learned Senior Counsel for the petitioner is relying on the decision of the Supreme Court in the case of **Krishnamoorthy (supra)** and it is the case of the petitioner in the election petition at paragraph 1

ground No. (IV) that the declaration made by the respondent obviously and ex-facie come within the ambit of definition of corrupt practice as mentioned in Section 100 of the R.P. Act, the petitioner has to prove the fact alleged by him beyond all reasonable doubts. Mere proof of the fact that a case was there, the record of which has been deposited in the Record Room will not be sufficient to infer or presume that the respondent had the knowledge in the year 2014 that still that case is pending against him wherein no charge has been framed against him. So far knowledge is concerned, I have already discussed the material and evidences. On the basis of above discussed materials and the relevant laws, the petitioner is insisting the Court to presume the fact that the respondent had filed vakalatnama engaging advocate, he had filed bail application, he had furnished bail bond, and prayed for permission to remain on previous bail, he was filing hazri and was present in Court physically. On the facts stated above for the purpose of declaring the election result of the respondent as void, the Court cannot presume the facts. If it is presumed then in view of the decision of the Supreme Court it will be corrupt practice of undue influence.

56. The settled principle of law is that whenever the allegation of corrupt practice is there, the petitioner is required to prove the charge beyond all reasonable doubts. Reference may be made in this respect to four decisions of Supreme Court, in **A.I.R. 1975 SC 290 (Rahim Khan Vs. Khurshid Ahmed and others), 667 (Ch. Razik Ram Vs. Ch. J. S. Chouhan and others), 1045 (Pratap Singh Vs. Rajinder Singh and another) and 1053 (Surya Kant Roy Vs. Imamul Hai Khan) and A.I.R 1979 SC 234 (K. M. Mani etc. Vs. P. J. Antony and others)**. In the present case, the petitioner is insisting to presume the fact above stated. As stated above, it is the duty of the petitioner to prove this fact beyond all reasonable doubts and if the petitioner fails to prove, the election result cannot be declared as void. If there is doubt then benefit of doubt must be given to the returned candidate. Here, if the Court presumes this fact then it will have serious consequences, such as the exercise made by the Election Commission in conducting the election, time and money and manpower spent by the Election Commission wherein the public money is involved will be meaningless and again re-election will be held for which same procedure will be followed wherein huge public money will be spent and that will be only because the respondent had not disclosed the criminal case which died its legal death that too which was not within the knowledge of the respondent. In my opinion, this cannot be the intention of the Supreme Court or the legislature. There cannot be any straightjacket formula that if no disclosure is made then the election result will always be declared void. The fact will differ from case to case. Therefore, whenever there is mala fide suppression of fact or non-disclosure of fact knowingly and intentionally, the election can be declared void but where there is bona fide non-disclosure or knowledge is disputed fact as in the case, same principle will not apply. In the present case, admittedly the petitioner has been sentenced to life imprisonment in murder case and is in jail custody. He will be neither getting anything nor losing anything but if the election result is declared void, the respondent shall lose everything and that too for his no fault.

57. It further appears that the other cases were also pending in the same Civil Court at Chapra. The record of Chapra Muffasil P.S. Case No.55 of 2003 has been produced by the petitioner. It appears that in this case the respondent was appearing and obtaining bail and was also filing hazri. The record has been marked as Ext.II/9. The order taking cognizance is dated 14.03.2005 and the bail bond is Ext.II/11 and the F.I.R. has been marked as "A" for identification. Now when the respondent was appearing in this case in the same Civil Court premises and obtaining bail and furnishing bail bond and was also appearing on the date fixed by filing hazries himself, can it be believed that the respondent absconded or that he intentionally did not appear in the case of the year 1986, particularly when in case of the year 1986 co-accused were acquitted. There is no reason as to why the respondent will appear in one case and will not appear in the other case in the same Civil Court premises. In such circumstances, it cannot be said that the intention of the respondent is mala fide and he was either absconding or avoiding arrest because warrant was issued against him. When he was appearing in Chapra Muaffasil P.S. Case No.55 of 2003, he could have been remanded in Bhagwan Bazar P.S. Case No.46 of 1986 but it was never done not for one day or two days but on several dates.

58. In view my above discussion, I find that the knowledge of the respondent in the present case is disputed question of fact and in fact the case has legally died in the year 1993 and prior to that no charge was framed against the respondent, therefore it was not mentioned as claimed by the respondent. He has already mentioned the recent four criminal cases. In my opinion, therefore, the disclosure made by the respondent is substantial/sufficient compliance of the provision of Section 33A of the R.P. Act as such it cannot be said that the nomination paper of the respondent was improperly accepted and thereby it materially affected the result of the election. Nor it can be said that there is complete non-compliance of provisions of the R.P. Act and constitutional provisions rather in my opinion, there is sufficient compliance/substantial compliance.

59. The learned Senior Counsel, Mr. P.K. Verma submitted that the respondent has not disclosed the properties which are in the name of his wife. The petitioner has produced three registered sale deeds which are in the name of the wife of respondent and these three sale deeds have been marked as Exts.III/1, III/2 and III/3 which are dated 08.03.2007 and 13.10.2008. On the basis of these registered sale deeds the learned Senior Counsel submitted

that it is also requirement of law but the respondent did not disclose the asset as such on this ground also the election of the respondent is liable to be declared as void. So far this submission is concerned, it may be mentioned here that there is no pleading at all in the petition nor any issue was framed on this point. It is settled law that the Court cannot travel beyond the pleadings of the party. The point raised by the petitioner is pure question of fact. It is also settled law that the Court is required to find out the controversy and decide the same on the basis of pleadings and evidence but cannot make a third case. Therefore, when there is no pleading in the election petition about non-disclosure of assets in the name of wife of the respondent, the evidence, if any, produced by the petitioner is just liable to be ignored.

60. The Hon'ble Supreme Court in the case of **Markio Tado Vs. Takam Sorang, (2012) 3 Supreme Court Cases 236** has held that **the material facts must be precisely pleaded in the petition. No evidence can be laid on a plea which is not raised in pleading. If election petitioner fails to place any material on record in respect of grounds on which election is sought to be declared void, he cannot be allowed to make fishing and roving enquiry to improve his case.**

61. The Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., 2013 (1) P.L.J.R. 48 (SC) at paragraph 69 (vii)** has held that **the Court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored.**

62. In view of the settled proposition of law, this point raised by the petitioner during course of hearing and the evidences produced in support of the fact are liable to be ignored.

63. The Hon'ble Supreme Court in the case of **Mangani Lal Mandal Vs. Bishnu Deo Bhandari (2012) 3 Supreme Court Cases 314** has held that **mere non-compliance or breach of the Constitution or the statutory provisions by itself, does not invalidate election of returned candidate. It is essential for election petitioner to aver and prove by pleading material facts that result of the election of returned candidate was materially affected by such breach or non-compliance. It is only on the basis of such pleading and proof that court can form an opinion and record a finding thereon before declaring election of returned candidate void.** In the present case, there is nothing on record to show that merely because of non-disclosure of criminal case, the result of the election was materially affected. It also cannot be said that the nomination of respondent was improperly accepted because as I have held above that there is substantial compliance of the requirement of law.

64. So far the decisions relied upon by the learned Senior Counsel for the petitioner as discussed above are concerned, it may be mentioned here that the facts of those cases are entirely different. In some of the cases there was total suppression of fact and in some cases knowingly false fact was disclosed.

65. The Hon'ble Supreme Court in **A.I.R. 2011 Supreme Court 1989 (Narmada Bachao Andolan Vs. State of M.P.) at paragraph 59** has held that **the Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as statute, as it is to be remembered that judicial utterances have**

been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases.

66. The Hon'ble Supreme Court in the case of **Resurgence India Vs. Election Commission of India & Anr., A.I.R. 2014 Supreme Court 344** has held that **when a candidate files an affidavit with blank particulars, it renders the affidavit itself nugatory. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. The candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank cannot be treated at par.** In view of this decision which is relied upon by the petitioner here it cannot be said that the respondent gave a false information in the affidavit or he filed the affidavit with particulars left blank. Whatever information has been given by the respondent is true information and the affidavit is not left blank.

67. In view of my above discussion, I find that the decisions relied upon by the learned Senior Counsel for the petitioner are not applicable in the present facts and circumstances of the case. The facts of those cases are entirely different and decisions rendered on the basis of those facts cannot be made applicable in the present peculiar facts and circumstances of this case. So far the laws laid down by the Supreme Court in those cases are concerned, there is no dispute about it but the law has to be applied on the basis of fact of a case.

68. Thus, I ultimately come to the conclusion that the affidavit filed by the respondent with nomination paper does not suffer from material defect because of non-disclosure of Bhagwan Bazar P.S. Case No.46 of 1986 and, therefore, it is not a case of improper acceptance of his nomination paper nor it is a case of non-compliance of Constitutional provision or provision of the R.P. Act. Therefore, the election of the respondent cannot be declared void either under Section 100(1)(d)(i) or (iv) of the R.P. Act, 1951. These issues are, thus, answered against the petitioner and in favour of the respondent.

69. In the result, this election petition is dismissed.

(MUNGESHWAR SAHOO, J)

[No. 82/ES-1/EP/(6/2014)/BR-HP/2017]

By Order,

SUMIT MUKHERJEE, Principal Secy.

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